

(2003) 11 BOM CK 0006

In the Bombay High Court

Case No : Criminal Rev. Application No. 44 of 2000 and Cri. Application No's.
345 and 349 of 2000

Nitin Jairam Gadkari

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 29-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 190, 210
Penal Code, 1860 (IPC) — Section 200, 201, 302

Citation : (2004) 4 MhLj 419

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : J.T. Gilda, M.R. Joshi, R.P. Joshi and Anand Jaiswal, for the Appellant; A.G. Muzumdar, Additional Public Prosecutor and Harish Dangre, for the Respondent

Judgement

D.D. Sinha, J.—Heard Mr. Gilda, learned counsel for the applicant, Mr. Muzumdar, learned Additional Public Prosecutor for the respondent No. 1 and Mr. Dangre, learned counsel for respondent No. 2 in Criminal Revision Application No. 44 of 2000, Mr. Joshi, learned counsel for the applicants and Mr. Dangre, learned counsel for the respondent sole in Criminal Application No. 345 of 2000, and Mr. Anand Jaiswal, learned counsel for the applicant and Mr. Dangre, learned counsel for the respondent sole in Criminal Application No. 349 of 2000.

2. All the above referred proceedings are initiated by the applicants under Sections 482 as well as 397, Criminal Procedure Code, against the common order, dated 10th February, 2000, passed by Chief Judicial Magistrate, Nagpur, issuing process against the applicants for the offences punishable under Sections 200 and 201, read with Section 34 of the Indian Penal Code, in Regular Criminal Case No. 530 of 1998.

3. Mr. Joshi, learned counsel, states that the applicant No. 1 in Criminal Application No. 345 of 2000, namely Mr. Ulhas Joshi was a Central Government

Officer selected for the Indian Police Service, and, at the relevant time, he was the Commissioner of Police, Nagpur. Similarly, the applicant No. 2 in the said criminal application - Mr. M. Y. Siram, at the relevant time, was in the employment of the State. The applicant No. 1 Dhananjay Kamlakar in Criminal Application No. 349 of 2000 was, at the relevant time, Deputy Commissioner of Police, Nagpur, and the applicant No. 2 - Mr. Vinod M. Yeskade was, at the relevant time, Police Station Officer, Tahsil Police Station, Nagpur, and the applicant - Mr. Nitin Jairam Gadkari in Criminal Revision Application No. 44 of 2000 was, at the relevant time, Guardian Minister for Nagpur District.

The brief facts, which are material for the controversy in issue, are as follows :--

4. During the night between 15-12-1998 and 16-12-1998, three persons were killed by the gun shots fired from the pistol of one Prakash Dwarkadas Kalyani. According to the said Mr. Prakash Kalyani, these three persons had entered the premises of his Chemist Shop called "Shyam Medical Stores" adjacent to the Mayo Hospital, Nagpur, and they were armed with deadly weapons like two country-made revolvers, two daggers etc., around midnight on 15th December, 1998 with an intent to commit robbery and dacoity and one of them opened fire after threatening the servant of Prakash Kalyani, namely Satish Kanhaiyalal Dwivedi. The assailants demanded money and started abusing the owner of the shop and also extended threats. Three persons, who were present in the Chemist Shop at the relevant time, were Prakash Kalyani, his servant Satish Dwivedi and brother of Prakash Kalyani, Rajendra Kalyani. Two of the assailants were having a country-made handgun and a revolver each and the third one had a dagger in his hand. After the first fire by one of the assailants, Prakash Kalyani took out his licensed revolver and in the meantime the other assailant carrying another country-made revolver fired from the same. However, both the rounds of fire missed their target and hit on the showcase and on the edge of the computer which was in the shop. In the process, in self-defence, Prakash Kalyani fired back from his licensed revolver - Two of the assailants received one bullet injury each and the other one was hit by two bullets. Consequently, two of the assailants fell down in the shop itself and the third one started running away from the shop and fell down a few feet away from the shop. Prakash Kalyani himself called the Police Control Room as well as the Tahsil Police Station also. The preliminary investigation was started by Police. Since the wireless message had already reached the Night Patrolling Squad, Police Sub-Inspector Rajendra Laxman Vibhandik of the Patrolling Squad removed all the three injured to the Mayo General Hospital for treatment.

5. After completing investigation in the matter, i.e., Crime No. 324 of 1998 was registered against the assailants, an abated summary was sent to the Chief Judicial Magistrate, Nagpur, since the assailants succumbed to their injuries. In the meantime, relatives of the deceased assailants lodged a report with Tahsil Police Station on 22-12-1998 against Prakash Kalyani, owner of the Chemist Shop, Rajendra Kalyani, brother of Prakash Kalyani, and Satish Dwivedi, servant,

alleging that these persons with the common intention had murdered the deceased and, therefore, Crime No. 333 of 1998 was registered against these persons. Since there was no prima facie evidence connecting the alleged three persons with the offence of murder and as it was revealed in the investigation that Prakash Kalyani had fired in private defence for defending himself, his brother and servant as well as his property, "C" summary report was sent to the learned Chief Judicial Magistrate, Nagpur, on 20-2-1999, who, by his order dated 30-7-1999, rejected the "C" summary. The said order was challenged by the State of Maharashtra by filing Criminal Revision Application No. 966 of 1999 before the Sessions Court, Nagpur, and the learned Seventh Additional Sessions Judge, Nagpur, by an order dated 21-10-1999, set aside the order dated 30-7-1999, of Chief Judicial Magistrate, Nagpur, and remanded the matter back to the learned Chief Judicial Magistrate for further orders in accordance with law. The matter went back to the Chief Judicial Magistrate, who directed further investigation to be done by State C.I.D., Nagpur, as per his order dated 16-11-1999.

6. Pursuant to the order dated 16-11-1999, passed by Chief Judicial Magistrate, further investigation was done by Shri Kishore Bele, Deputy Superintendent of Police, State C.I.D., Nagpur, and after conducting investigation, a report was submitted to the Chief Judicial Magistrate by the State C.I.D., in which it is stated that no offence is made out against the shopkeeper, i.e., Prakash Kalyani, Rajendra Kalyani and Satish Dwivedi, u/s 302, read with Section 34, Indian Penal Code and, therefore, request was made by State C.I.D., for grant of "C" summary in Crime No. 333 of 1998 registered at Tahsil Police Station, Nagpur, and the Chief Judicial Magistrate, vide order dated 8th June, 2000, accepted the request made by the State C.I.D., and granted "C" Summary as prayed for by the State C.I.D., vide order dated 8th June, 2000.

7. In the meantime, the respondent-non-applicant Shri Mohan Prasad Tripathi filed a private Criminal Complaint on 24-12-1998 against eleven persons including the present applicants and Prakash Kalyani before the Chief Judicial Magistrate, Nagpur, which was registered as Regular Criminal Case No. 530 of 1998. However, at the later point of time, Chief Judicial Magistrate, vide Order dated 19-1-1999 dismissed the complaint against accused Nos. 2 - Shri Manohar Joshi, the Chief Minister of Maharashtra as he then was, 3- Shri Gopinath Munde, the then Home Minister of State of Maharashtra, 5-Shri Arvind Inamdar, the then Director General of Police, 6-Secretary, Home Department and Shri Manukumar Shrivastava, the then Collector of Nagpur, as there was absolutely no allegation in the complaint against these persons. Similarly, so far as accused No. 1- Prakash Kalyani is concerned, in view of the fact that offence u/s 302, read with Section 34, Indian Penal Code, was registered against him by Tahsil Police, the Chief Judicial Magistrate, vide Order dated 19-1-1999, stayed the enquiry to be held in the criminal complaint against him for offence u/s 302, Indian Penal Code, till Police Inspector, Tahsil Police Station, reports about the result of the investigation in Crime No. 333 of 1998 u/s 302, read with Section 34, Indian

Penal Code. The criminal complaint was filed by the complainant on the basis of newspaper reports. The Chief Judicial Magistrate, for verification of the complaint, vide Order dated 19-1-1999, directed the complainant Mr. Mohan Prasad Tripathi to lead evidence against the present applicants in support of the alleged offences under Sections 200, 201, 181, 182 and 119 of the Indian Penal Code. The complainant adduced evidence of five witnesses and after recording the evidence of these witnesses, Chief Judicial Magistrate has issued process vide order dated 10th February, 2000 in the said private complaint filed by Mr. Mohan Prasad Tripathi against the present applicants for the offences punishable under Sections 200 and 201, read with Section 34, Indian Penal Code, which is impugned in the present Criminal Application Nos. 345 of 2000, 349 of 2000 and Criminal Revision Application No. 44 of 2000. Since the criminal applications and the Criminal Revision Application are arising out of the common order passed by the Chief Judicial Magistrate for issuance of process, all these criminal applications and Revision were heard together and disposed of by this common judgment.

8. The learned counsel for the applicants contended that in the instant case, the process is issued by the Chief Judicial Magistrate against the present applicants in respect of the offences punishable under Sections 200 and 201, read with Section 34, Indian Penal Code, for using as true such declaration knowing it to be false as well as causing disappearance of evidence of offence as well as giving false information to screen offender. The crime of murder was registered vide Crime No. 333 of 1998 against Prakash Kalyani, Rajendra Kalyani and Satish Dwivedi and investigation, at the relevant time, was in progress. It is submitted that though the Chief Judicial Magistrate, vide Order, 16-11-1999, directed the State C.I.D., to investigate the offence registered vide Crime No. 333 of 1998, the State C.I.D. could not gather any evidence against the accused Prakash Kalyani, Rajendra Kalyani and Satish Dwivedi and the State C.I.D. submitted a report dated 8-3-2000, against these persons in respect of the offence u/s 302, read with Section 34 of Indian Penal Code in the Court of Chief Judicial Magistrate and prayed for grant of "C" summary in Crime No. 333 of 1998. The learned Chief Judicial Magistrate accepted the report (Exh.8) of State CID and also accepted the request made by Shri M.Y. Siram, Asstt. Commissioner of Police, Kotwali Division, Nagpur, on 20-2-1999, for grant of "C" summary in Crime No. 333 of 1998, and vide order dated 8th June, 2000, granted "C" summary in Crime No. 333 of 1998, on the ground that in the later investigation done by State CID, no evidence is coming forth to issue process u/s 302, Indian Penal Code, against the accused persons. It is contended by respective learned counsel that when there is no evidence available to implicate the accused Prakash Kalyani, Rajendra Kalyani and Satish Dwivedi, for the offence punishable u/s 302, read with Section 34, Indian Penal Code, and when no offence is made out against these persons, the question of prosecution of the present applicants for the offences u/s 200 and 201 of the Indian Penal Code does not arise at all, since these are the incidental offences. It is, therefore, contended that in the

instant case when the main offence u/s 302, Indian Penal Code, is not made out against the above referred persons, question of causing disappearance of such evidence does not arise at all. Similar is the situation so far as offence u/s 200, Indian Penal Code, is concerned. It is, therefore, contended that the order dated 10th February, 2000, passed by the Chief Judicial Magistrate, issuing process against the applicants for the offences under Sections 200 and 201, Indian Penal Code, be quashed and set aside. In order to substantiate this contention, reliance is placed on the judgment of the Apex Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, .

9. The impugned order is challenged by the applicants only on the ground that no evidence is available against Prakash Kalyani and other co-accused in Crime No. 333 of 1998 and because of that, "C" summary is granted in the said crime by the Chief Judicial Magistrate and, therefore, question of proceedings against the present applicants for the offences under Sections 200 and 201, read with Section 34, Indian Penal Code, at this stage, does not arise.

10. Mr. Dangre, learned counsel for the respondent, contended that the proceedings initiated on the basis of police report as well as a private complaint in the Court of Chief Judicial Magistrate are distinct and separate and required to be tried by the Magistrate accordingly. It is further contended that merely because "C" summary is granted by the Chief Judicial Magistrate in Crime No. 333 of 1998, vide Order dated 8th June, 2000, that does not affect the validity of the order dated 10th February, 2000, passed by Chief Judicial Magistrate in Regular Criminal Case No. 530 of 1998, whereby the process is issued against the applicants for the offences punishable under Sections 200, 201, read with Section 34, Indian Penal Code.

11. Mr. Dangre, learned counsel for the complainant, states that Section 190, Criminal Procedure Code, deals with the situations where the cognizance of offences is taken by the Magistrate. It is contended that Sub-section (2) of Section 190 of the Criminal Procedure Code contemplates that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts, and (c) upon information received from any person other than a Police Officer, or upon his own knowledge that such offence is committed. It is, therefore, contended that these are the three distinct and separate modes provided u/s 190, Criminal Procedure Code, wherein the Magistrate can take cognizance of the offences. It is contended that the instant case falls within the ambit Sub-clause (a) of Section 190, Criminal Procedure Code, where the Magistrate has taken cognizance upon receiving the complaint of the complainant by issuing process for the offences punishable under Sections 200 and 201, read with Section 34, Indian Penal Code, which is separate and distinct than the taking of cognizance by the Magistrate upon the police report, which is contemplated in Sub-clause (b) of Section 190.

12. Mr. Dangre, learned counsel, further contended that Section 210 of the Code

of Criminal Procedure, provides a procedure to be followed when there is a complaint case and the police investigation in respect of the same offence. The learned counsel states that the present case falls within Sub-section (3) of Section 210 of the Criminal Procedure Code, which contemplates that if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, the Magistrate shall proceed with the enquiry or trial, which was stayed by him, in accordance with the provisions of the Criminal Procedure Code. Mr. Dangre, learned counsel, therefore, contended that in the instant case, Chief Judicial Magistrate is entitled to proceed with the trial of the applicants and it is only stayed in view of "C" summary granted by the Chief Judicial Magistrate, vide Order dated 8th June, 2000, in Crime No. 333 of 1998 against accused Prakash Kalyani. The learned counsel, therefore, states that the impugned order dated 10th February, 2000, is sustainable in law.

13. I have given my anxious thought to the above referred various contentions canvassed by the respective counsel and also perused the relevant provisions of law relied on and cited by the respective counsel. Before I take up the controversy in issue, it will be appropriate to mention certain relevant undisputed facts, which are as follows :--

(A) During the night between 15-12-1998 and 16-12-1998, around 12.25, three persons had entered the chemist shop owned by Prakash Kalyani. At the relevant time, his brother Rajendra Kalyani and servant Satish Dwivedi were very much present in the medical shop. These three persons were armed with deadly weapons like country-made revolvers, handguns etc. These three persons (assailants) demanded money and started abusing and threatening the shopkeeper. Two out of these assailants, who were armed with handguns and revolvers, opened fire. Prakash Kalyani took out his licensed revolver and fired back. All the three assailants received bullet injuries and succumbed to the same. The police, after completing investigation, registered Crime No. 324 of 1998 against those assailants and since they succumbed to the injuries, an abated summary was forwarded to the Chief Judicial Magistrate.

(B) In the meanwhile, another development took place, namely the relatives of those deceased assailants lodged a report with Tahsil Police Station against Prakash Kalyani, Rajendra Kalyani and Satish Dwivedi and, therefore, Crime No. 333 of 1998 came to be registered against these persons for the offence punishable u/s 302, read with Section 34, Indian Penal Code. The State C.I.D., after completing investigation, as directed by the Chief Judicial Magistrate, vide order dated 16-11-1999, filed a report on 8-3-2000 in the Court of Chief Judicial Magistrate, in which it is specifically stated that no offence is made out against Prakash Kalyani, Rajendra Kalyani and Satish Dwivedi and requested for grant of "C" summary. The Chief Judicial Magistrate granted "C" summary vide order dated 8th June, 2000 in Crime No, 333 of 1998.

(C) The present complainant Mohanprasad Tripathi, in the meanwhile, on

24-12-1998, filed a private complaint in the Court of Chief Judicial Magistrate, Nagpur, which is registered as Regular Criminal Case No. 530 of 1998. The Chief Judicial Magistrate, vide Order, dated 19-1-1999, in view of registration of offence u/s 302, read with Section 34, Indian Penal Code, against Prakash Kalyani, stayed the inquiry against Prakash Kalyani for the offence u/s 302, Indian Penal Code, in Criminal Case, i.e., Regular Criminal Case No. 530 of 1998 till the outcome of the proceedings in Crime No. 333 of 1998. The Chief Judicial Magistrate, vide Order dated 10th February, 2000, issued process against the present applicants for the offences punishable under Sections 200 and 201, read with Section 34, Indian Penal Code, in Regular Criminal Case No. 530 of 1998 which is the order impugned in both these Criminal Applications as well as Criminal Revision Application.

14. On the backdrop of the above referred facts, it would be appropriate before I adjudicate in respect of the issue in question to consider the scheme and procedure contemplated by the provisions of Sections 200 and 201 of the Indian Penal Code. To attract the provisions of Section 200, Indian Penal Code, the declaration must be used or attempted to be used corruptly. The words "such declaration" appearing in Section 200 have reference to the declaration which a person is not bound under the law to make, but which, if made, is admissible under an express provision of Law of Evidence and the facts declared without anything further. It must be borne in mind that in order to come within the ambit of this section, the declaration must not only be false, but also, by law, receivable as evidence by a Court of Justice or a Public Servant or other persons. Similarly, so far as the provisions of Section 201 of the Indian Penal Code are concerned, the same relate to disappearance of any evidence of the commission of an offence and includes also the giving of false information with the intention of screening an offender. The essential ingredients of the offence u/s 201, Indian Penal Code, are that (a) an offence has been committed, (b) the accused must or has reason to believe that the offence has been committed, (c) the accused must either cause any evidence of the commission of that offence to disappear, or give any information respecting the offence which he knows or believes to be false, and (d) the accused must have acted with an intention to screen the offender from the legal punishment. In other words, whenever an offence has actually been committed, any person, knowing or having reason to believe that it has been committed and intending to screen the offender from the legal punishment, causes any evidence of commission of the said offence to disappear, or gives any information respecting such offence which he knows or believes to be false, is punishable under this section.

15. While considering the applicability of provisions of Section 201, Indian Penal Code, it must be borne in mind that it is mandatory for the prosecution to prove that an offence, the evidence of which the accused is charged with causing to disappear, has actually been committed and that the accused knew, or had information sufficient to lead him to believe that the offence has been committed. The term used in the section "knowing or having reason to believe"

conclusively negatives and preclude the view that its provisions are applicable in cases in which an offence has not been committed. Similarly, in respect of the person charged with offence u/s 201, Indian Penal Code, it must be proved that such person/persons has/have actively participated in the matter of disappearance of evidence and not merely suffered the same to happen. The act committed must have been done with the intention of screening the offender from the legal punishment. Mere knowledge that he is likely to do so is not sufficient. In view of the scheme and procedure contemplated u/s 201, Indian Penal Code, the utmost important ingredient is that it must be actually proved that the principal offence is committed, the evidence of which the accused charged with causing disappearance and in absence thereof, criminal liability under this section is not attracted.

16. In the instant case, the principal offence of murder is alleged to have been committed by Prakash Kalyani, who is also co-accused in Regular Criminal Case No. 530 of 1998 filed by the complainant Mr. Tripathy, wherein the Chief Judicial Magistrate by the impugned order issued process against the applicants for the offences punishable under Sections 200 and 201 of the Indian Penal Code. In view of the scheme of the provisions of Section 201, Indian Penal Code, the present applicants can be charged with causing to disappear evidence of an offence of murder which must be committed and, therefore, by necessary implication, before the applicants can be charged with the liability u/s 201, Indian Penal Code, there must be evidence to show that Prakash Kalyani has committed offence of murder and then the question of disappearance of evidence or giving any information respecting the murder with an intention to screen the offender, namely Prakash Kalyani, from the legal punishment would arise. In the instant case, it is evident that in spite of a thorough investigation by State C.I.D., in Crime No. 333 of 1998, the prosecution could not even collect prima facie evidence to make out the offence of murder against Prakash Kalyani, which is evidence from the Order dated 8th June, 2000, passed by Chief Judicial Magistrate in Crime No. 333 of 1998, whereby "C" summary is granted. The relevant observations contained in paragraph No. 46 of the said order read thus :

"46. Investigation by C.I.D. was order to be done by this Court to ascertain truth. In the later investigation, there is no evidence came forth to issue process against Prakash Kalyani u/s 302 of Indian Penal Code. The subsequent investigation by C.I.D., is found thorough and deep and therefore, there is no room to suspect the same or throw it away. Thus, the report of C.I.D. (Exh.8) needs to be accepted in the circumstances of the matter and further "C" Summary as prayed for earlier, needs to be granted. Hence, the following order."

The operative part of the order dated 8-6-2000, passed by Chief Judicial Magistrate reads thus :--

"ORDER

The report of C.I.D. (Exh.8) is accepted.

ii) The request of Shri M. Y. Siram, A.C.P., Kotwali Division, Nagpur dated 20-2-1999 for grant of "C" Summary in Crime No. 333/98 of P. St. Tahsil, Nagpur is hereby granted, iii) C Summary be issued accordingly. iv) Seized property be preserved till appeal period is over. Thereafter appropriate order will be passed."

There is nothing on record to show that the order dated 8th June, 2000, passed by Chief Judicial Magistrate granting "C" summary in Crime No. 333 of 1998 is either altered, modified or set aside by the superior forum and, therefore, the same is in existence as on today.

17. In the case in hand, the Chief Judicial Magistrate, vide the impugned order dated 10th February, 2000, issued process against the applicants for the offences punishable u/s 200 and 201 of the Indian Penal Code by observing in Para 17 of the order thus :

17. Non-applicant No. 1 (Mr. Prakash Kalyani) was publicly honoured by non-applicant No. 4 (Mr. Nitin Gadkari, Guardian Minister) in presence of non-applicant No. 7 (Mr. Ulhas Joshi, Commissioner of Police), non-applicant No. 8 (Mr. Dhananjay Kamlakar, Deputy Commissioner of Police), non-applicant No. 9 (Mr. Mangaljeet Siram, Asstt. Commissioner of Police) and Non-applicant No. 10 (Mr. Vinod Yeskade, Police Inspector) after the occurrence. Thus, the fact of shooting of three persons at the hands of non-applicant No. 1 was within the knowledge of non-applicant Nos. 4 and 7 to 10. They declared publicly that the non-applicant No. 1 shot dead the three persons in his private defence. Likewise, no thorough investigation was made by non-applicants 7 to 10. The act of honour at the hands of non-applicant No. 4 in presence of non-applicants 7 to 10 seems to have helped the non-applicant No. 1 to screen from the legal punishment. Thus, in this case, Sections 200 and 201 of the Indian Penal Code will come into play.

In view of the above referred observations, it is evident that the process against the applicants is issued for the offences under Sections 200 and 201, Indian Penal Code on the ground that the accused Prakash Kalyani was publicly honoured by Mr. Nitin Gadkari, the then Guardian Minister for Nagpur District in presence of other applicants, where it was declared that Prakash Kalyani shot dead three persons in his private defence. According to the Chief Judicial Magistrate these acts amount to declaration by the applicants, which is not only false, but also, by law, receivable as evidence by a Court of Justice and, therefore, they are alleged to have committed an offence u/s 200, Indian Penal Code as well as intended to screen the offender from legal punishment by causing any evidence of commission of the offence to disappear, or giving any information respecting the offence which they know or believe to be false and, therefore, they have also committed offence under the provisions of Section 201, Indian Penal Code.

18. In the case in hand, the prosecution, in spite of its best efforts and a thorough investigation by State C.I.D., utterly failed to procure any evidence to

connect Prakash Kalyani with the offence of murder u/s 302 of the Indian Penal Code in Crime No. 333 of 1998 and, therefore, Chief Judicial Magistrate, was justified in granting "C" summary in Crime No. 333 of 1998. In a situation like this, a mere declaration that Prakash Kalyani shot dead three persons in his private defence cannot be said to be a false statement made in the declaration and, therefore, the provisions of Section 200, Indian Penal Code, at this stage, are not attracted at all. Similarly, the observation of the Chief Judicial Magistrate that the act of Mr. Gadkari honouring Prakash Kalyani in presence of other applicants amounts to screening Prakash Kalyani from the legal punishment and, therefore, the applicants have committed offence u/s 201, Indian Penal Code, in the facts and circumstances of the case, is misconceived. I have already observed hereinabove that in order to attract the provisions of Section 201, Indian Penal Code, the most essential ingredient of the offence is that the prosecution must prove the principal offence. In the instant case, before the liability for offence u/s 201, Indian Penal Code, can be fastened on the applicants, the principal offence of causing murders of three assailants by Prakash Kalyani needs to be made out on the basis of evidence. However, it is not in dispute that the prosecution utterly failed even to collect such evidence which would disclose even a prima facie case for offence of murders against Prakash Kalyani and, therefore, the Chief Judicial Magistrate was pleased to grant "C" summary in Crime No. 333 of 1998. If that is so, the first and most important ingredient in order to attract the liability for the offence u/s 201, Indian Penal Code, is absent and, therefore, in the circumstances of the present case, the mere act of honouring Prakash Kalyani publicly and declaring that he shot dead three persons in his private defence would neither amount to causing disappearance of evidence of murder, nor it would amount to the giving of any information by the applicants in respect of the offence of murder which they know or believe to be false with an intention to screen the accused Prakash Kalyani from the legal punishment, as required, and, therefore, liability for the offence u/s 201, Indian Penal Code, is not attracted.

19. On the backdrop of the above referred facts, it is crystal clear that there is no evidence, whatsoever, even to make out a prima facie case against Prakash Kalyani for offence of murders. The above referred act of the applicants in honouring Prakash Kalyani and making the above referred declaration does not attract either provisions of Section 200 or Section 201, Indian Penal Code and, therefore, it will not be inherently improbable, but absurd to allow prosecution of the applicants for the offences under Sections 200 and 201, Indian Penal Code. The order of issuance of process against the applicants for the offences under Sections 200 and 201, Indian Penal Code is, therefore, completely misconceived and totally devoid of substance.

20. Although Section 190 of the Criminal Procedure Code provides for cognizance of offences by Magistrate, it is neither exhaustive of the Courts that can take cognizance, nor of the materials on which cognizance may be taken. The cognizance arises in three contingencies as mentioned in Sub-section (1) of

Section 190, Criminal Procedure Code. The first is the complaint of the aggrieved person, second is the police report and the third is on the basis of the information received from the person other than the police officer or upon his own knowledge that the offence has been committed. Taking cognizance is a judicial function. The expression "taking cognizance" in Section 190, Criminal Procedure Code, merely means judicial application of mind by the Magistrate to the facts mentioned in the complaint with a view to taking further action. As to when the cognizance is taken of an offence by the Magistrate will necessarily depend upon the facts and circumstances of each case. There is no quarrel about these aspects so far as Section 190, Criminal Procedure Code, is concerned. However, the contention of learned counsel Mr. Dangre for the complaint-respondent, as canvassed, is that Sub-section (3) of Section 210, Criminal Procedure Code, permits the Magistrate to proceed with the enquiry or trial in respect of those accused who are not connected/related with the police report as well as when the Magistrate has not taken cognizance of an offence on the police report against such accused. It is contended that so far as complaint filed by Mr. Tripathy against the present applicants vide Regular Criminal Case No. 530 of 1998 is concerned, Prakash Kalyani is prosecuted for offence u/s 302, Indian Penal Code and the present applicants are prosecuted for the offences punishable under Sections 200 and 201, Indian Penal Code. It is submitted that since the police report in Crime No. 333 of 1998 relates to Prakash Kalyani alone for the offence punishable u/s 302, Indian Penal Code, Chief Judicial Magistrate is justified in staying further enquiry or trial against him and since other accused are neither connected with the police report, nor any Magistrate has taken any cognizance on the basis of any offence on the police report against the present applicants, the Chief Judicial Magistrate is entitled to proceed with the enquiry or trial against the applicants for the offences under Sections 200 and 201, Indian Penal Code. The above referred contention canvassed by the learned counsel Mr. Dangre cannot be accepted in the facts and circumstances of the case in hand. It is, no doubt, true that the complaint case should be stayed when it is brought to the notice of the Magistrate that the police investigation on the same is in progress and the Magistrate then shall call a report from the police officer concerned to ensure that the investigation in the same matter has been proceeding. It must be borne in mind that the offence must be identical. In view of Sub-section (1) of Section 210, Criminal Procedure Code, when a complaint case and a police case are filed over the same offence, the complaint case is to be stayed. However, where the Magistrate has already taken cognizance on the police report and thereafter the complaint is filed, provisions of Section 210, Criminal Procedure Code, are not attracted. In order to attract the provisions of Section 210, Criminal Procedure Code, it is necessary that when the complaint case is filed, the police investigation should be pending and in progress, and not completed. In the instant case, Sub-section (2) of Section 210 is not relevant for the matter in controversy and, therefore, I have not expressed any opinion in that regard. The provisions of Sub-section (3) of Section 210, Criminal Procedure Code, contemplate that when all the accused in the complaint case are not

named/implicated in the police report, the Magistrate taking cognizance on a police report against some, may take cognizance against others on the complaint. Thus, Section 210(3), Criminal Procedure Code, does not prohibit the Magistrate from proceeding u/s 209, Criminal Procedure Code, with regard to the accused against whom there is neither a police report, nor cognizance on such report is taken by the Magistrate. However, this analogy will have to be considered on the basis of the peculiar facts of the present case. In the normal set of circumstances, no doubt, the Magistrate could have proceeded against the applicants, since there is neither a police report against them, nor any cognizance of any offence on a police report is taken by the Magistrate against them. However, in the instant case, the survival of the offences under Sections 200 and 201, Indian Penal Code, against the applicants depends upon the commission of the main offence of murders by Prakash Kalyani, wherein the prosecution utterly failed to even collect any evidence to make out a prima facie case for the offence of murders against Prakash Kalyani and, therefore, in a situation like this, as already observed by me, it will be absurd to allow the Magistrate to proceed with the enquiry or trial against the applicants for offences under Sections 200 and 201, Indian Penal Code. It will not only be a futile exercise, but a completely misconceived situation and, therefore, in my considered view the contention canvassed by Mr. Dangre in this regard is misconceived and devoid of substance.

21. It is, no doubt, true that u/s 190, Criminal Procedure Code, three contingencies are enumerated, in which the Magistrate can take cognizance of the offences. In the instant case, the Chief Judicial Magistrate has taken cognizance in view of the contingency mentioned in Sub-clause (a) of Sub-section (2) of Section 190, Criminal Procedure Code. There is no quarrel that the taking of cognizance on a private complaint by the Magistrate and upon the police report is distinct and separate and in the normal set of circumstances required to be treated as a distinct and separate proceeding. However, in view of the peculiar facts and circumstances involved in the case in hand, the survival of the prosecution against applicants for the offences under Sections 200 and 201, Indian Penal Code, for which process is issued by the Chief Judicial Magistrate, totally depends upon the commission of principal offence of murders u/s 302, Indian Penal Code, registered against Prakash Kalyani and, therefore, though the cognizance taken by the Magistrate on a private complaint as well as upon a police report is in a distinct and separate situation, however, in the case in hand, the outcome of the proceedings initiated against Prakash Kalyani upon the police report vide Crime No. 333 of 1998 for the offence punishable u/s 302, read with, Section 34, Indian Penal Code, has a direct and positive bearing in respect of the proceedings initiated by the complainant Mr. Tripathy by filing a private complaint, i.e., Regular Criminal Case No. 530 of 1998 against the present applicants, since existence of the offences under Sections 200 and 201, Indian Penal Code, for which Chief Judicial Magistrate, has issued process against applicants by the impugned order, totally depends upon the survival on criminal

prosecution of Mr. Prakash Kalyani in Crime No. 333 of 1998. It is implicit that if the prosecution for the offences under Sections 200 and 201, Indian Penal Code, is incidental, it can survive only if there is a prima facie prosecution evidence to implicate an offender in the main crime. However, when the prosecution evidence does not make out a prima facie case against the offender for the principal crime, it is evident that in such situation it is not possible to prosecute anybody for the offences punishable under Sections 200 and 201, Indian Penal Code. In the instant case, as already observed by me hereinabove, when the prosecution miserably failed, at this stage, to even collect prima facie evidence for the offence punishable u/s 302, Indian Penal Code, against Prakash Kalyani, how can the present applicants be prosecuted for either disappearance of such evidence or giving false information to screen the offender, against whom the prosecution has failed to collect any evidence for the offence of murders. Similarly, for the same reasons, the so called declaration alleged to have been made by the applicants also cannot be said to be a declaration made by the applicants as true, though knowing it to be false and, therefore, the order of issuance of process against the applicants for the offences punishable under Sections 200 and 201, Indian Penal Code, is misconceived.

22. In view of the facts referred to hereinabove, it is evident that though the crime is investigated by local police as well as State C.I.D., they could not collect prima facie evidence against Prakash Kalyani for the offence u/s 302, Indian Penal Code, in Crime No. 333 of 1998 and, therefore, "C" summary is granted by the Chief Judicial Magistrate vide Order dated 8th June, 2000 and it is, therefore, obvious that at this stage, for want of adequate evidence, criminal proceedings in Crime No. 333 of 1998 cannot proceed further against Prakash Kalyani and consequently the proceedings initiated by the complainant - Mr. Tripathy against Prakash Kalyani for the same offence of murders are rightly stayed by the Chief Judicial Magistrate in Regular Criminal case No. 530 of 1998, vide Order dated 19th January, 1999 and, therefore, it will not only be inherently improbable, but also absurd to allow prosecution of the applicants for the offence u/s 201, Indian Penal Code, for causing disappearance of the evidence or giving false information to screen the offender, as well as making a declaration as true knowing it to be false for the offence punishable u/s 200, Indian Penal Code, when there is no prima facie evidence for the principal offence of murders alleged to have been committed by Prakash Kalyani.

23. In the instant case, this Court has neither adjudicated upon the other grounds raised by the applicants in their respective criminal applications and criminal revision application, nor any opinion is expressed thereon, except on point which is argued before me.

On the backdrop of the above referred facts and circumstances, the impugned order, dated 10th February, 2000, is unsustainable in law. The same is quashed and set aside and the complaint dated 24-12-1998, filed by the complainant in the Court of Chief Judicial Magistrate is dismissed so far as it relates to the

applicants.